

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

94-122 OCT 26 2 02 PM '94

MM Docket No. 94-286

DIS BY

In the Matter of

Amendment of Section 73.202(b), RM-8513
Table of Allotments,
FM Broadcast Stations.
(Atlantic and Glenwood, Iowa)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 18, 1994; Released: October 26, 1994

Comment Date: December 19, 1994

Reply Comment Date: January 3, 1995

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Valley Broadcasting, Inc. ("petitioner"), requesting the reallocation of Channel 279C from Atlantic to Glenwood, Iowa, and the modification of Station KXKT's license to specify Glenwood as its community of license. Petitioner failed to state its intention to apply for Channel 279C, if reallocated to Glenwood. It is therefore requested to do so in comments herein.

2. Petitioner seeks modification of Station KXKT's license pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Atlantic and Glenwood are located approximately 29 kilometers apart whereas the Commission's Rules require a minimum distance separation of 290 kilometers for co-channel Class C allotments. Therefore, the use of Channel 279C at Glenwood is mutually exclusive with its use at Atlantic. Petitioner submits that the adoption of its proposal would result in a preferential arrangement of allotments since it would provide Glenwood with its first local aural transmission service. Atlantic would not lose its sole local aural transmission service as it would still receive such service from fulltime AM Station KJAN.¹ Atlantic has a 1990 U.S. Census population of 7,432 persons. Petitioner states that Glenwood is an incorporated city, with a 1990 U.S. Census population of 4,571 persons, and the seat of Mills County. In addition, it states that Glenwood has its own municipal government, police department, county sheriff, volunteer fire department, post office and zip code. Glenwood also

has its own elementary, middle and high schools, as well as shopping centers, a business district, two banks, two savings and loan associations, and medical professionals.

3. Based on the information before us, we are unable to tentatively conclude that petitioner's proposal would result in a preferential arrangement of allotments. It is true that the reallocation of Channel 279C to Glenwood would provide that community with its first local aural transmission service while not depriving Atlantic of its sole local transmission service. However, the petitioner did not provide any technical study showing what areas and populations would gain and lose reception service as a result of the reallocation. Therefore, petitioner is requested to provide such a study in its comments herein. In this regard, we note that while Glenwood is not located within any Urbanized Area, the petitioner's proposed transmitter site is but 3 kilometers (1.9 miles) from the Omaha Urbanized Area. Therefore, we request that petitioner also provide information specify what portion of any population gain is the result of coverage of the Omaha Urbanized Area.

4. We believe the public interest would be served by soliciting further comments on this proposal since it could provide Glenwood with its first local aural transmission service, if granted. We also propose to modify petitioner's license for Station KXKT to specify Glenwood as its community of license. In compliance with Section 1.420(i), we will not accept competing expressions of interest in use of Channel 279C at Glenwood. Channel 279C can be allotted to Glenwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.6 kilometers (15.3 miles) north of Glenwood to accommodate petitioner's desired transmitter site.²

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Atlantic, Iowa	279C	--
Glenwood, Iowa	--	279C

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **December 19, 1994**, and reply comments on or before **January 3, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

¹ Petitioner also submits that there are five FM channels which can be allotted to Atlantic. However, as stated in *Change of Community MO&O*, 5 FCC Rcd 7094 (1990), the replacement of an existing station with a vacant allotment does not obviate

the disruption caused by the removal of the operating station.

² The coordinates for Channel 279C at Glenwood are 41-15-49 North Latitude and 95-46-21 West Longitude.

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Acting Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules. IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be ex-

pected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.